

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Kevin Vernon Robinson, # 382330) No.: 5:20-cv-02974-SAL-KDW
)
)
Plaintiff,)
)
v.) ORDER
)
Director Bryan Stirling; Dr. April Clark,)
Medical Director; and Warden Terrie)
Wallace,)
)
Defendants.)
)

Plaintiff Kevin Vernon Robinson was previously an inmate at the Kirkland Correctional Institution and is now an inmate at the Palmer Pre-release Center. On August 18, 2020, Plaintiff, proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. [ECF No. 1]. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Kaymani West for pretrial handling. On October 26, 2020, Defendants Stirling, Clarke, and Wallace filed an answer. [ECF No. 30]. Thereafter, on November 10, 2020 then-Defendant Governor Henry McMaster filed a Motion to Dismiss for failure to state a claim. [ECF No. 33]. Plaintiff responded to the Motion to Dismiss on January 4, 2021, ECF No. 38, and Governor McMaster replied on January 11, 2021, ECF No. 39. United States Magistrate Kaymani West issued a Report and Recommendation (“R&R”), recommending that Governor McMaster be dismissed as a party to this action, on March 1, 2021. ECF No. 46. On April 29, 2021, the undersigned issued an Order ruling on the R&R, finding no clear error and adopting the R&R. [ECF No. 59]. Governor McMaster was dismissed as a party from the

action on April 29, 2021. Notably, Plaintiff filed no objection to the March 1, 2021 R&R and did not lodge objections or appeal the Order adopting the R&R.

On July 23, 2021, Plaintiff filed a motion to voluntarily dismiss his Complaint *without prejudice* because of certain constraints and an inability to gather certain information. [ECF No. 67]. Defendants, in their response, consent to the voluntary dismissal of the case as requested by the Plaintiff. [ECF No. 68]. However, Defendants argue that, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, Governor McMaster should be dismissed *with prejudice* and requests that the Court direct the entry of final judgment consistent with the Court's April 29, 2021 order. *See id.* They argue “[b]ecause [] Plaintiff already waived appellate review by failing to file objections, there is no prejudice to [] Plaintiff in entering final judgement for McMaster under these circumstances.” *Id.* at 2

Under Rule 41(a)(2), a district court may dismiss an action “at the plaintiff’s request only by a court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). “The purpose of Rule 41(a)(2) is freely to allow voluntary dismissals unless the parties will be unfairly prejudiced.” *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987). “In considering a motion for voluntary dismissal, the district court must focus primarily on protecting the interests of the defendant.” *Id.* “A plaintiff’s motion under Rule 41(a)(2) should not be denied absent substantial prejudice to the defendant.” *Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). Unless the order states otherwise, a dismissal under Rule 41(a)(2) is without prejudice. Fed. R. Civ. P. 41(a)(2).

Plaintiff has indicated that he seeks to dismiss his case, and Defendants have consented to such. Governor McMaster has previously been dismissed as a party to this action with prejudice,

and the clerk is instructed to issue a final judgement in Governor McMaster's favor. All remaining Defendants will be dismissed without prejudice. Based on this ruling, the pending Motion for Summary Judgment, ECF No. 52, is DENIED as moot.

IT IS SO ORDERED.

July 28, 2021
Florence, South Carolina

/s/Sherri A. Lydon
Sherri A. Lydon
United States District Judge